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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re

DANA AARON LINETT,

Debtor.

CASE NO. 19-05831-LA11

Chapter 11

MOTION TO GRANT DISCHARGE
UPON THE EFFECTIVE DATE OF
PLAN OF REORGANIZATION

DATE: November 5, 2021

TIME: 2:30 p.m.

DEPT.: Two

JUDGE: Hon. Louise DeCarl Adler

1 The Debtor, Dana Aaron Linett (the "Debtor") respectfully submits the following motion
 2 to grant the Debtor a discharge upon the Effective Date of the Debtor's Plan of Reorganization.

3 I.

4 **DEBTOR MAY BE PROVIDED A DISCHARGE FOR CAUSE**

5 11 U.S.C. Section 1141(d)(5)(A) provides that "[in] a case in which the debtor is an
 6 individual unless after notice and a hearing the court orders otherwise for cause, confirmation of
 7 the plan does not discharge any debt provided for in the plan until the court grants a discharge
 8 on completion of all payment under the plan". Cause is not defined in this statute and while
 9 several courts have addressed the issue of what constitutes "cause," no consensus has arisen. See,
 10 *In re Detweiler*, 2012 Bankr. LEXIS 5501, 2012 WL 5935343 (Bankr. N.D. Ohio Nov. 27, 2012)
 11 (collecting cases). See also *In re Grogan*, 2013 Bankr. LEXIS 37961 (Bankr. Oregon 2013)
 12 where the court agreed with *Detweiler* that "cause" must be determined based on the totality of
 13 the facts and circumstances of each case, 2012 but believes that at minimum a debtor must show
 14 the ability to make plan payments with "a high degree of certainty." (quoting *In re Beyer*, 433
 15 B.R. 884, 888 (Bankr. M. D. Fla. 2009).

16 In the instant case, the Debtor will be surrendering all of his non-exempted assets to a
 17 liquidating trustee upon confirmation of the Plan. At that point in time, the Debtor will have no
 18 control over those assets, as the liquidating trustee with a fiduciary duty owing to creditors, will
 19 take on the responsibility of liquidating those assets for the benefit of the Debtor's creditors. As
 20 of the Effective Date of the Plan, the Debtor will have completed all of his duties with relation
 21 to the turnover of assets. There will be nothing more for the Debtor to do other than to cooperate
 22 with the liquidating trustee in the trustee's efforts to liquidate those assets. It will then be up to
 23 the liquidating trustee to make plan payments. As the trustee will have all the necessary powers
 24 to liquidate all of the assets transferred to him, there will be a high degree of certainty that plan
 25 payments will occur and the Debtor, under the circumstances, will have no further involvement
 26 in the liquidation process. Given that the Debtor will have complied with his obligations as of
 27 the Effective Date and has already agreed to the liquidation of all of his non-exempt assets in
 28 order to maximize a return for creditors, the facts and circumstances in this case should certainly

1 allow for the Debtor's discharge as of the Effective Date. The Plan of Reorganization was
2 negotiated with several of the Debtor's main creditors and the Debtor believes the plan, which
3 clearly provides for the discharge, will be consensual. In addition, the Debtor's Disclosure
4 Statement notifies all creditors that the Plan provides for a discharge as of the Effective Date.
5 That, along with this noticed motion, will have given creditors ample notice to consider the
6 Debtor's discharge prior to confirmation and prior to the entry of such a discharge.

7 For the reasons set forth herein and for the reasons discussed in detail in the Debtor's
8 Disclosure Statement seeking approval of his Plan of Reorganization, the Debtor respectfully
9 requests that this Court grant this motion and, if the Plan is approved, that the Order of
10 Confirmation on that plan provide for the Debtor's discharge as allowed under Section
11 1141(d)(5)(A).

12
13 Dated: September 17, 2021

/s/ Gustavo E. Bravo

John L. Smaha, Esq.

Gustavo E. Bravo, Esq.

Attorneys for Debtor and Debtor-in-Possession,

Dana Aaron Linett